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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

POND, ROBERT M

ART UNIT

PAPER NUMBER

3625

DATE MAILED: 11/08/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Applicati n No.

09/528,466

Applicant(s)

MITCHELL, STEVEN R.

Examiner

Robert M. Pond

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 March 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-53 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-53 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Drawings***

1. This application has been filed with informal drawings which are acceptable for examination purposes only. Applicant is required to submit corrected drawings of the noted defects. Applicant is required to submit drawing corrections promptly. Drawing corrections may no longer be held in abeyance. Noted defects include: Figures 1 and 6 do not meet margin requirements. Please see 37 CFR 1.84 for drawing standards.

### ***Specification***

2. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-53 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding Claims 1, 18, 35, and 42 the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

4. Claims 4-8, 20-25, 37, 38, 44, and 45 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Process claim language was omitted. Claim structure has to be corrected to put into proper method claim form. For example:

- For examination purposes Claim 4 was examined as if to read: "The method of Claim 3, calculating the retailer profit data as either a percentage above the manufacturer's cost or a specified sum."
- For examination purposes Claim 5 was examined as if to read: "The method of Claim 3, varying the retailer profit data among the goods sold by the retailer."
- For examination purposes Claim 6 was examined as if to read: "The method of Claim 3, calculating the retailer profit data as the same for each of the goods sold by the retailer."

The examples cited above are not exhaustive. Claims 7, 8, 20-25, 37, 38, 44, and 45 require claim language that puts each into proper method claim form.

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 1-53 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The invention as recited in the claims is merely an abstract idea that is not within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e., the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory subject matter.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or

(2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

- 6. Claims 1, 2, 8, 9, 11-13, 16-18, 25, 26, 28-30, 33-35, 39-42, 46, 47, 49, 51, and 52 are rejected under 35 USC 102(e) as being anticipated by Sharp et al., patent number 6,263,317.**

Sharp et al. teach all the limitations of Claims 1, 2, 8, 9, 11-13, 16-18, 25, 26, 28-30, 33-35, 39-42, 46, 47, 49, 51, and 52. For example, Sharp et al. disclose a system, method, and machine readable medium of selling goods over the Internet that allow consumers to place orders for brand-name products and allocate orders to manufacturers, distributors, and retailers according to distribution channel protocols defined by the manufacturer. Sharp et al. teach the e-commerce website allowing the customer to place multiple orders for multiple products or services in a single session based on product information supplied by manufacturers, distributors, and retailers, allocating the order to a supplier or suppliers of these selected products after the order is confirmed (see at least abstract; Fig. 1(100); col. 1, lines 20-62; col. 2, line 25 through col. 3, line 44). Sharp et al. teach a secure server implementing code for order status, order fulfillment, order allocation, dynamic website, and further teach Internet access to the secure sever over the Internet by consumers, manufacturers, and manufacturer partners comprising distributors and retailers (please see at least

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Fig. 2 (200); col. 3, lines 45-60). Sharp et al. teach customers conducting secure web browsing activities over the Internet, accessing manufacturer web sites, retailer web sites, and further teach manufacturer and retailer sites redirecting customers to the e-commerce site. Sharp et al. teach a customer's order being split among multiple suppliers due to the presence of more than one allocation protocol, checking product availability in inventory and completing the product allocation process among one or more suppliers (see at least Fig. 3 (303-390); Fig. 4 (400); col. 3, line 60 through col. 5, line 63). Shape et al. teach charging buyers for the cost of the product, including costs for taxes, shipping and handling, and transferring funds to suppliers for the cost of the product, including funds to cover shipping and handling.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

- 7. Claims 3-7, 19-24, 36-38, and 43-45 are rejected under 35 USC 103(a) as being unpatentable over Sharp et al., patent number 6,263,317, in view of Official Notice, and further in view of Old and Well Known.**

Sharp et al. teach all the above as noted under the 102(e) rejection and further teach a) charging buyers for the cost of the product, including costs for taxes, shipping and handling, b) transferring funds to suppliers for the cost of the product, including funds to cover shipping and handling, and c) establishing a warehouse of products by various manufacturers on consignment maintained by the owner of the website, or from the distributor, or from the manufacturer depending on the results of the allocation process. This examiner takes the position that the structure of the funds transferred to the supplier varies depending on where the product is picked for shipment. For example, if a retailer redirects a buyer to the purchasing site and the retailer's own inventory is picked, the profit data submitted to the purchasing site by the retailer would include its cost for the product and its profit. If the retailer redirects the buyer to the purchasing site, and the product is picked from the purchasing site's warehouse, then the retailer's profit data would comprise its commission for the sale. Therefore it is would have been obvious to one of ordinary skill in the art at time of the invention to include different profit data as taught by Official Notice, in order to accommodate the various schemes of picking inventory, and thereby satisfy the needs of the suppliers involved in the sale.

It is Old and Well Known for manufacturers to quote retailers a suggested list price and the retailer's cost of the product. From this information the retailer prices the product to the buyer based on a percentage or a specified amount above generally not to exceed the manufacturer's suggested list price. It is Old



and Well Known that retailers vary their profit across products based on supply, demand, and volume purchasing criteria. It is Old and Well Known that retailers maintain the same profit across one or more goods sold. It is Old and Well Known that the above statement pertaining to retailers applies to distributors wherein the distributor's customer is typically a retailer. Therefore it would have been obvious to one of ordinary skill in the art at time of the invention to modify the system, method, and machine readable medium of Sharp et al. and Official Notice to include retailer and distributor profit pricing support as taught by Old and Well Known, in order to better support the business needs of the retailer and distributor, and thereby attract more retailers and distributors to the electronic commerce site.

- 8. Claims 10, 27, 48 are rejected under 35 USC 103(a) as being unpatentable over Sharpe et al., patent number 6,263,317, in view of Blinn et al., patent number 6,058,373.**

Sharp et al. teach all the above as noted under the 102(e) rejection and further teach a) using infrastructure code for the secure server comprising Microsoft Active Server Pages, Microsoft Site Server, and Microsoft SQL database, b) collecting shipping address information, c) using zip code data or other geo-based allocation scheme to determine supplier geographic proximity to the buyer, and d) accessing the site via a global communications network, but does not request a buyer's country data for shipping purposes. Blinn et al. teach

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the system and method of Microsoft's merchant system featuring a site server that manages the processes necessary to execute electronic sales transactions. Blinn et al. further teach collecting the buyer's full address including country for shipping purposes (see at least abstract; Fig. 1-3; col. 1, line 65 through col. 4, line 14). Therefore it would have been obvious to one of ordinary skill in the art at time of the invention to modify the system, method, and machine-readable medium of Sharp et al. to include country data as taught by Blinn et al., in order to determine supplier proximity to buyer, and thereby minimize shipping costs and reduce transit time to the buyer.

**9. Claims 14 and 31 are rejected under 35 USC 103(a) as being unpatentable over Sharpe et al., patent number 6,263,317, in view of Applicant Admission.**

Sharp et al. teach all the above as noted under the 102(e) rejection and further teach transferring funds to suppliers to cover their costs for products, but does not disclose specifics on other settlement arrangements. The Applicant discloses old and well-known business practices of suppliers receiving payment for products sold based on periodic settlement arrangements with their retailers (e.g. 30 day period). Therefore it would have been obvious to one of ordinary skill in the art at time of the invention to modify the method of Sharp et al. to include periodic payments as taught by Applicant Admission, in order to compress or expand periodic settlement with suppliers as necessary to achieve competitive

advantage over rival sites, and thereby attract more suppliers to the site with more favorable settlement terms.

- 10. Claims 15, 32, and 50 are rejected under 35 USC 103(a) as being unpatentable over Sharp et al., patent number 6,263,317, in view of Messer, patent number 5,991,740.**

Sharp et al. teach all the above as noted under the 102(e) rejection and further teach a purchasing server that coordinates a buyer's purchasing transaction with participating suppliers but does not disclose how the purchasing site sustains itself financially to remain in business. Messer teaches a system and method of tracking and managing commerce related activities over a public network and discloses a novel commission plan that allows a portion of a successful sale made by a participating merchant be retained as credit to the site owner. Therefore it would have been obvious to one of ordinary skill in the art at time of the invention to modify the system, method, and machine-readable medium of Sharp et al. to include site commissions as taught by Messer, in order to generate revenues necessary to fund the purchasing site's operation.

- 11. Claim 53 is rejected under 35 USC 103(a) as being unpatentable over Sharpe et al., patent number 6,263,317, in view of Messer, patent number 5,991,740, and further in vi w of Applicant Admission.**

Sharp et al. teach all the above as noted under the 102(e) rejection and further teach a purchasing server that coordinates a buyer's purchasing transaction with participating suppliers but does not disclose how the purchasing site sustains itself financially to remain in business. Messer teaches a system and method of tracking and managing commerce related activities over a public network and discloses a novel commission plan that allows a portion of a successful sale made by a participating merchant be retained as credit to the site owner. Therefore it would have been obvious to one of ordinary skill in the art at time of the invention to modify the system, method, and machine-readable medium of Sharp et al. to include site commissions as taught by Messer, in order to generate revenues necessary to fund the purchasing site's operation.

Sharp et al. and Messer teach all the above as noted under the 102(e) and 103(a) rejections and further teach transferring funds to suppliers to cover their costs for products, but does not disclose specifics on other settlement arrangements. The Applicant discloses old and well-known business practices of suppliers receiving payment for products sold based on periodic settlement arrangements with their retailers (e.g. 30 day period). Therefore it would have been obvious to one of ordinary skill in the art at time of the inventions to modify the method of Sharp et al. and Messer to include periodic payments as taught by Applicant Admission, in order to compress or expand periodic settlement with suppliers as necessary to achieve competitive advantage over rival sites, and thereby attract more suppliers to the site with more favorable settlement terms.

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Mr. Robert M. Pond** whose telephone number is 703-605-4253. The examiner can normally be reached Monday-Friday, 8:30AM-5:30PM EDT.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Ms. Wynn Coggins** can be reached on 703-308-1344.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the **Receptionist** whose telephone number is **703-308-1113**.

Any response to this action should be mailed to:

***Commissioner of Patents and Trademarks***

***Washington D.C. 20231***

or faxed to:

**703-305-7687** (Official communications; including After Final communications labeled "Box AF")

Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive, Arlington, VA, 7<sup>th</sup> floor receptionist.

RMP  
November 1, 2002

